

1 should aggressively promote the deployment of highly efficient GHP systems for
2 residential customers.

3 **IV. CHARGING CUSTOMERS FOR TRADE ASSOCIATION ACTIVITIES**

4 **Q. Is the Company a member of any trade associations?**

5 A. Yes, the Company is a member of both the Edison Electric Institute and the American
6 Gas Association.⁷⁷

7 **Q. Please describe the issue of the Company seeking cost recovery from customers for**
8 **trade association activities.**

9 A. The Company seeks to recover trade association dues as an “above-the-line” expense
10 from ratepayers. Unbeknownst to most customers, these payments may be used to fund
11 advocacy with which customers may disagree and that is contrary to their interests. The
12 Company reports that it paid a total of \$262,382 in dues—\$117,285 to the Edison Electric
13 Institute (“EEI”), and \$145,097 to the American Gas Association (“AGA”).⁷⁸ Groups
14 such as EEI and AGA receive a majority of their revenue from utility membership dues,⁷⁹
15 are highly political in nature, and promote policies that are not always in the best interests
16 of ratepayers.

17 The Company refused the Department of Public Service Staff’s request to provide
18 descriptive information relating to the purpose of the organizations and the organizations’
19 financial statements, annual budgets, and activities.⁸⁰ Instead, the Company reports, in
20 response to Staff’s request, that based on unsworn and undocumented information

⁷⁷ Company response to DPS 1-48 (annexed hereto as KRR-4).

⁷⁸ Company response to DPS 1-48.

⁷⁹ U.S. Dep’t of Treasury, IRS, Form 990, Part VIII Statement of Revenue (Edison Electric Institute, 2015), <https://projects.propublica.org/nonprofits/organizations/130659550>.

⁸⁰ Company response to DPS 1-48.

1 provided by EEI and AGA on the invoices to the Company, \$28,991 of the total \$262,382
2 was related to “lobbying fees” and was recorded as a “below the line” expense for which
3 the Company does not seek recovery.⁸¹ The Company provides no information to support
4 the reasonableness of cost recovery for the “above the line” dues—which amount to
5 \$233,391 each rate year⁸²—or to ensure the accuracy of the assertions by the associations
6 as to the extent to which dues are used to support lobbying and advocacy positions. The
7 Company has failed to demonstrate that the costs associated with EEI and AGA
8 membership dues are limited to activities that benefit ratepayers and therefore are just
9 and reasonable. The Company has failed to demonstrate that it has removed all payments
10 for lobbying activities from the costs it seeks to recover from customers. The Company
11 produced no evidence that it verified the assertions from EEI and AGA. Based on this
12 failure to justify and substantiate the reasonableness of cost recovery for the dues paid to
13 EEI and AGA, I recommend that the Commission deny recovery of these expenses and
14 order the Company to adjust its revenue requirement downward accordingly.

15 **Q. In sum, what justification does the Company provide for the reasonableness and**
16 **appropriateness of requiring customers to pay \$233,391 each rate year for the**
17 **Company’s membership in EEI and AGA?**

18 A. The Company asserts that has invoices from the EEI and AGA that total \$262,382, and
19 that include notations, probably made by the invoicing clerk at each of those

⁸¹ *Id.* The Company asserts that is has invoices from the EEI and AGA that total \$262,382, and that include notations, apparently made by the invoicing clerk at each of those organizations, that indicate that \$28,991 of the dues supported lobbying by those organizations.

⁸² Calculated as $\$117,285 + \$145,097 = \$262,382 - \$28,991 = \$233,391$.

1 organizations, that indicate that \$28,991 of the dues supported lobbying by those
2 organizations.

3 **Q. What is EEI, and what services does the trade association provide to its members?**

4 A. EEI is a trade association with a large operating budget (\$90 million in 2015) that
5 represents U.S. investor-owned electric companies in all 50 states.⁸³ EEI describes its
6 mission as providing public policy leadership, industry data, business intelligence,
7 conferences and forums, and products and services to the utility industry.⁸⁴ EEI also
8 provides a Mutual Assistance Program in which member utilities can access assistance
9 during storms to restore power to affected customers.⁸⁵ Most of EEI's work involves
10 promoting its utility members' policy agenda and bottom-line through political action and
11 legal intervention.⁸⁶

12 **Q. What is AGA and what services does the trade association provide for its members?**

13 A. AGA is a trade association that represents more than 200 natural gas supply companies in
14 the United States.⁸⁷ AGA supports the use and production of natural gas through
15 regulatory and policy intervention, development assistance, exchange of information, and
16 conferences and workshops.⁸⁸ AGA advocates for the increased development of pipeline

⁸³ David Anderson et al., Energy & Policy Inst. ("EPI"), *Paying for Utility Politics* 4 (2017) ("EPI, *Paying for Utility Politics*"), <http://www.energyandpolicy.org/wp-content/uploads/2017/05/Ratepayers-funding-Edison-Electric-Institute-and-other-organizations.pdf>. A copy of the Executive Summary of this report is annexed hereto as Exhibit KRR-5.

⁸⁴ See EEI, *About EEI*, <http://www.eei.org/about/Pages/default.aspx> (last visited May 24, 2018).

⁸⁵ See EEI, *Mutual Assistance*, <http://www.eei.org/issuesandpolicy/electricreliability/mutual-assistance/> (last visited May 24, 2018).

⁸⁶ See EPI, *Paying for Utility Politics* at 4.

⁸⁷ See AGA, *Fact Sheets*, <https://www.aga.org/knowledgecenter/facts-and-data/fact-sheets> (last visited May 24, 2018).

⁸⁸ See AGA, *Our Mission*, <https://www.aga.org/about/our-mission> (last visited May 24, 2018).

1 infrastructure.⁸⁹ AGA also is credited with positioning natural gas as a “bridge fuel,”
2 allowing for natural gas to be publicly viewed as part of the solution to climate change.⁹⁰

3 **Q. What portion of EEI’s budget is spent on lobbying activity as compared with other**
4 **activities?**

5 A. It is unknown what portion of EEI’s budget is allocated towards lobbying activity
6 because the most recently available NARUC audit of EEI data is from 2005.⁹¹ The
7 Company has not submitted a more recent audit of any kind in this proceeding.

8 **Q. Why is it important to know how EEI treats its expenditures?**

9 A. Reliable data on EEI spending activity is necessary for reasonable allocations of expenses
10 between lobbying and non-lobbying activity. Absence of that data presents a significant
11 challenge for stakeholders, ratepayers, and regulatory authorities who seek to protect
12 ratepayers from funding lobbying and any non-lobbying advocacy that may not be in
13 their best interest.

14 **Q. Why is it important to determine what activities and policies the EEI and AGA**
15 **ratepayer-funded dues support?**

16 A. The majority of New Yorkers support renewable energy, the reduction of GHG
17 emissions, and New York’s REV initiative.⁹² New York energy policy is committed to a

⁸⁹ See AGA, 2017 Playbook, *Natural Gas: Moving Our National Forward*, 24–26,
<http://playbook.aga.org> (last visited May 24, 2018).

⁹⁰ See Jeff Share, *Dave McCurdy Brings Strong Credentials to AGA*, Pipeline & Gas Journal
(Dec. 2011), <https://pgjonline.com/2011/12/01/dave-mccurdy-brings-strong-credentials-to-aga/>.

⁹¹ See EPI, *Paying for Utility Politics*, at 32.

⁹² A 2016 survey of New York voters found that more than 90% of New Yorkers strongly
support solar power, more than four out of five New Yorkers support the REV initiative, and a
majority of them view global warming as a serious problem. See The Nature Conservancy, New
York Voter Attitudes on a Cleaner Energy Future (2016) (slides 4–7),
[https://www.nature.org/ourinitiatives/regions/northamerica/unitedstates/newyork/climate-
energy/new-york-voter-attitudes-on-clean-energy.pdf](https://www.nature.org/ourinitiatives/regions/northamerica/unitedstates/newyork/climate-energy/new-york-voter-attitudes-on-clean-energy.pdf).

1 clean, distributed, affordable energy future, while EEI and AGA advocacy and policy
2 positions have been demonstrably inimical to the type of clean energy goals New York
3 hopes to achieve. REV was launched to champion renewable energy, grid modernization,
4 the reduction of carbon emissions, and a safer, more resilient, affordable, and reliable
5 electricity grid for the benefit of New York's citizens. The development of more
6 distributed renewable energy assets and energy efficiency programs, coupled with a
7 reduction in the expansion of fossil fuels and GHG emissions, provide direct and
8 quantifiable benefits to ratepayers throughout the State.

9 **Q. What dues-funded EEI and AGA activities are in the interest of New York**
10 **ratepayers?**

11 A. Examples of association activities clearly in the interests of ratepayers include: EEI and
12 AGA sponsored workforce education and training modules, knowledge campaigns
13 centered around electrical and gas safety, and EEI's Mutual Assistance Program that
14 combines utility resources during extreme weather to restore power to customers.

15 **Q. So, what is the problem with above-the-line trade association dues?**

16 A. The problem is that the EEI and AGA act as advocacy organizations in supporting a
17 policy agenda contrary to many ratepayers' interests or personal beliefs, and the policies
18 of the State of New York. In one example, over the period of 2008 to 2015, EEI donated
19 \$142,667 to the American Legislative Exchange Council ("ALEC"), of which AGA is a
20 member as well.⁹³ ALEC, a politically conservative 501(c)(3) organization, provides

⁹³ EPI, *Paying For Utility Politics* at 17.

1 state legislators with “model bills” to oppose renewable energy standards and overturn
2 laws that reduce carbon dioxide emissions.⁹⁴

3 **Q. Are you recommending that the Company not be allowed to indirectly fund ALEC**
4 **or other anti-renewable energy advocacy organizations through its contributions to**
5 **EEI and AGA member dues?**

6 A. No. I accept that the Company may decide that it is in the best interests of shareholders to
7 join in these agendas. My testimony is that ratepayers should not be required to support
8 these organizations, directly or indirectly, through EEI and AGA dues, and that the
9 Company must produce sufficient and competent evidence to the Commission that any
10 dues payments that it seeks to recover from ratepayers through the revenue requirement
11 do not fund these activities. If permissible non-lobbying EEI and AGA activities amount
12 to less than fifty percent of the total organizational budget, Orange & Rockland
13 customers will be involuntarily funding lobbying and political advocacy activities carried
14 out by EEI and AGA.

15 **Q. What other issues has EEI supported that conflict with ratepayers’ interests?**

16 A. EEI maintains an ongoing effort to fuel doubt about climate science and oppose limits on
17 carbon emissions.⁹⁵ EEI advances this goal primarily by funding special interest groups
18 like the Utility Air Regulatory Group (“UARG”) and ALEC.⁹⁶ UARG recently submitted

⁹⁴ *Id.*; See Suzanne Goldenberg & Ed Pilkington, *ALEC Calls for Penalties on ‘Freerider’ Homeowners in Assault on Clean Energy*, The Guardian, Dec. 4, 2013, <https://www.theguardian.com/world/2013/dec/04/alec-freerider-homeowners-assault-clean-energy>.

⁹⁵ See, e.g., David Anderson et al., EPI, *Utilities Knew: Documenting Electric Utilities’ Early Knowledge and Ongoing Deception on Climate Change from 1968–2017* at 6 (2017) (“EPI, *Utilities Knew*”), <https://drive.google.com/file/d/0B8l-rYonMke-NG5ONVZkZVVJMG8/view>.

⁹⁶ In a 2015 case before the Indiana Utility Regulatory Commission (“IURC”), testimony revealed that \$173,612 of EEI annual dues were paid to UARG. See Verified Direct Testimony

1 comments to the Trump Administration encouraging the repeal and replacement of the
2 Clean Power Plan, broadly arguing against EPA's regulations requiring lower carbon
3 emissions from utilities.⁹⁷ In contrast, the State of New York's Office of the Attorney
4 General, representing the people of New York, led a coalition of states in support of the
5 Clean Power Plan.⁹⁸

6 EEI also has directly challenged state programs for rooftop solar and DER.⁹⁹ In
7 2014, EEI filed comments to the Arizona Corporation Commission to challenge
8 Arizona's net-metering policy.¹⁰⁰ EEI advocated for a change in the value of distributed
9 resources, arguing, among other things, that "grid security and reliability values should
10 not be considered in rates," that "environmental and social externalities should not be
11 included in [distributed generation ("DG")] rates," and that "DG systems should not be

of Derric J. Isensee, Attach. 6-B, at 37, *In re N. Indiana Pub. Serv. Co.*, Cause No. 44688 (IURC Oct. 1, 2015), <https://assets.documentcloud.org/documents/3111258/Northern-Indiana-Public-Service-Company-Dues.pdf>.

⁹⁷ See Letter from Andrea B. Field, Counsel, UARG, to Samantha K. Dravis, EPA, 5–7 (May 12, 2017), *submitted in* EPA, Docket ID EPA-HQ-OA-2017-0190-0042, <https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OA-2017-0190-40140&attachmentNumber=1&contentType=pdf>.

⁹⁸ See Press Release, New York State Attorney General Eric T. Schneiderman, A.G. Schneiderman Leads Coalition of States and Localities in Opposing Pres. Trump's Efforts to Dismantle the Clean Power Plan (Mar. 28, 2017), <https://ag.ny.gov/press-release/ag-schneiderman-leads-coalition-states-and-localities-opposing-pres-trumps-efforts>.

⁹⁹ See Joby Warrick, *Utilities Wage Campaign Against Rooftop Solar*, Washington Post, Mar. 7 2015, https://www.washingtonpost.com/national/health-science/utilities-sensing-threat-put-squeeze-on-booming-solar-roof-industry/2015/03/07/2d916f88-c1c9-11e4-ad5c-3b8ce89f1b89_story.html?utm_term=.5834a980a07b.

¹⁰⁰ Comments of the Edison Electric Institute, *Value & Cost of Distributed Generation (Including Net Metering)*, Docket No. E-00000J-14-0023 (Ariz. Corp. Comm'n Feb. 14, 2014), <http://docket.images.azcc.gov/0000151239.pdf> (formatting altered).

1 compensated directly for reducing market prices.”¹⁰¹ To support its position, the EEI ran
2 \$500,000 worth of television ads attacking solar customers.¹⁰²

3 **Q. What issues has AGA supported that conflict with ratepayers’ interests?**

4 A. AGA maintains an ongoing funding effort to support the growth and promote the use of
5 natural gas in the United States.¹⁰³ As noted earlier in my testimony, natural gas has a
6 significant GHG impact, historically has been characterized by volatile commodity
7 prices, and is not guaranteed to remain cost-effective for the useful life of the natural gas
8 infrastructure investments that AGA supports. Taken together, natural gas expansion is
9 demonstrably not in the interest of ratepayers, and ratepayers should not be made to foot
10 the bill for advocacy conducted by AGA that may run counter to ratepayer interest.

11 **Q. What other issues contrary to ratepayer interests has AGA supported?**

12 A. AGA funded and launched Your Energy, which is a public relations campaign
13 masquerading as a grassroots effort to combat genuinely local opposition to pipelines and
14 gas in Virginia.¹⁰⁴ In addition, AGA and EEI are members of the Utility Solid Waste
15 Activities Group (“USWAG”).¹⁰⁵ USWAG addresses solid and hazardous waste issues
16 on behalf of utilities and trade associations, while pursuing a litigious agenda against

¹⁰¹ *Id.* at 9–10.

¹⁰² See Adam Browning, *Edison Electric Institute Really Does Not Want You to Go Solar*, Greentech Media, Feb. 28, 2014, <https://www.greentechmedia.com/articles/read/in-rare-public-filing-edison-institute-downplays-value-of-solar-for-arizon>; see also EEITV, *We All Rely on the Electric Grid*, YouTube (Nov. 3, 2013), https://www.youtube.com/watch?v=Ut1_PosSLtk.

¹⁰³ See Jennifer Yachnin, *American Gas Association Seeking to Spread Its Influence Well Beyond the Beltway*, E&E Daily, Dec. 9, 2011, <https://www.eenews.net/stories/1059957439>.

¹⁰⁴ Alexander C. Kaufman, *Natural Gas Industry Brings a Fake Grassroots Movement Group to Eastern Pipeline Fights*, HuffPost, June 19 2017 (updated), http://www.huffingtonpost.com/entry/natural-gas-pipeline-your-energy-virginia_us_593afeb1e4b0240268793e8d.

¹⁰⁵ See *Utility Solid Waste Activities Group*, EEI <http://www.eei.org/about/affiliates/uswag/Pages/default.aspx> (last visited May 24, 2018).

1 common sense environmental rules and regulations.¹⁰⁶ For example, the EPA Coal
2 Combustion Residuals Rule places basic requirements on the maintenance, cleanup, and
3 groundwater monitoring of coal ash waste.¹⁰⁷ USWAG is petitioning the EPA for a stay
4 of the rule, calling it “ill-conceived and burdensome.”¹⁰⁸ This action is likely to harm
5 customers through reduced regulatory oversight and increased risk of environmental and
6 public health hazards.

7 **Q. Do any third-party regulatory organizations conduct oversight of utility EEI and**
8 **AGA dues?**

9 A. No, there is no regulatory oversight of the allocation of trade association membership
10 dues today. From the 1980s to the early 2000s, NARUC conducted annual audits of trade
11 association financial records through the Committee on Utility Oversight.¹⁰⁹ The audits
12 persuaded NARUC regulators to direct utilities to collect a smaller portion of their EEI
13 and AGA dues from ratepayers.¹¹⁰ The Committee on Utility Oversight, which audited

¹⁰⁶ See Press Release, Earthjustice, Polluters Ask Trump Administration to Cut Safeguards for Nation’s No. 2 Toxic Pollution Threat, May 12, 2017, <https://earthjustice.org/news/press/2017/polluters-ask-trump-administration-to-cut-safeguards-for-nation-s-no-2-toxic-pollution-threat>.

¹⁰⁷ See Disposal of Coal Combustion Residuals from Electric Utilities, 80 Fed. Reg. 21,301 (Apr. 17, 2015).

¹⁰⁸ USWAG Petition for Rulemaking to Reconsider Provisions of the Coal Combustion Residuals Rule, 80 Fed. Reg. 21,302 (Apr. 17, 2015), and Request to Hold in Abeyance Challenge to Coal Combustion Rule, No. 15-1219, et al. (D.C. Cir.) (EPA May 12, 2017); see Lyndsey Gilpin, *As Coal Ash Rules are Challenged, Activists Worry About Long-Term Monitoring*, Southeast Energy News, June 13, 2017, <http://southeastenergynews.com/2017/06/13/as-coal-ash-rules-are-challenged-activists-worry-about-long-term-monitoring/>.

¹⁰⁹ See NARUC Bd. of Directors, Resolution Regarding Discontinuation of the Committee on Utility Oversight (adopted Mar. 8, 2000), <http://pubs.naruc.org/pub/5398B543-2354-D714-51D3-90ACAB1DA952>.

¹¹⁰ See EPI, *Paying for Utility Politics*, at 6.

1 expenditure data, disbanded in the year 2000.¹¹¹ Recently, utilities have been seeking
2 lower than usual amounts from shareholders, and correspondingly higher shares from
3 customers—though there is no evidence of a major shift in program efforts at either EEI
4 or AGA. For example, Georgia Power proposed 29% of EEI dues as below-the-line
5 expenses in a 2016 filing,¹¹² NV Energy proposed 16% in a 2015 filing,¹¹³ and Oklahoma
6 Gas & Electric proposed 0% in a 2016 filing.¹¹⁴ Without transparency of spending data, it
7 is difficult to fully understand how EEI and AGA spend ratepayer funds. The
8 Commission is the best institution to re-address this issue in the absence of a coordinated
9 multi-state audit like the audit NARUC conducted.

10 **Q. Have other public utility commissions addressed this issue?**

11 A. While I have not conducted a comprehensive survey of all states, commissions in
12 California and Missouri have addressed the issue in recent rate cases. In 2013, the Utility
13 Reform Network (“TURN”), a California-based advocacy organization that represents
14 consumers before the California Public Utilities Commission (“CPUC”), succeeded in
15 challenging the above-the-line EEI dues allocation proposed by Pacific Gas & Electric
16 Co. (“PG&E”).¹¹⁵ TURN argued that “EEI spends money on many other things that do
17 not fit the narrow definition of lobbying” but nevertheless could impair ratepayer

¹¹¹ See NARUC Bd. of Directors, Resolution Regarding Discontinuation of the Committee on Utility Oversight (adopted Mar. 8, 2000).

¹¹² See *id.* at 20.

¹¹³ See *id.* at 24.

¹¹⁴ See *id.* at 20–21 & tbl.1; Responsive Testimony of Sharhonda Dodoo at 5:17–6:2 & tbl.1, *In re Okla. Gas & Elec. Co.*, No. PUD 201500273 (Corp. Comm’n Okla. Mar. 21, 2016), <https://www.documentcloud.org/documents/3111578-Sharhonda-Dodoo-PUD-Testimony-OGE-Dues.html#document/p6/a318911>.

¹¹⁵ See EPI, *Paying for Utility Politics*, at 34–37.

1 interests and therefore should not be funded by ratepayers.¹¹⁶ Based on TURN's
2 argument and the most recent 2005 NARUC audited data, the CPUC decided to increase
3 the allocation of below-the-line dues from the 25% proposed by PG&E to 43.3%.¹¹⁷ In a
4 later Southern California Edison ("SCE") case, SCE proposed to recover only 24% from
5 shareholders, while TURN requested that 100% of EEI dues be disallowed.¹¹⁸ In that
6 instance, the Administrative Law Judge agreed that SCE has "not shown that it has
7 removed all political or lobbying costs from its forecast."¹¹⁹ In the ruling, the
8 Administrative Law Judge proposed to increase the below-the-line allocation to 47.9%
9 from SCE's proposed 24%.¹²⁰

10 In 2015, the Missouri Public Service Commission ("MO-PSC") staff presented
11 testimony in support of disallowing all above-the-line EEI dues, stating: "Staff's
12 recommendation to disallow the entire amount of EEI dues stems from [Union Electric
13 Co. d/b/a Ameren Missouri's] failure to quantify these benefits between shareholders and
14 the ratepayers."¹²¹ MO-PSC staff noted that the MO-PSC had excluded all EEI dues in a
15 prior proceeding on the ground that "these payments have not been shown to produce any

¹¹⁶ William B. Marcus, Electric Generation and Other Results of Operations Issues for Pacific Gas & Electric Co., Prepared Testimony on behalf of TURN at 68, *In re Pacific Gas & Elec. Co.*, Appl'n No. 12-11-009 (CPUC May 17, 2013), <https://assets.documentcloud.org/documents/3382426/TURN-PGE-Testimony-2014-Rate-Request.pdf>.

¹¹⁷ Proposed Decision Granting Compensation to The Utility Reform Network for Substantial Contribution to Decision 14-08-032 at 8, *In re Pacific Gas & Elec. Co.*, Appl'n No. 12-11-009 (CPUC undated), <https://www.documentcloud.org/documents/3239245-COMPENSATION-to-TURN-for-SUBSTANTIAL.html#document/p8/a331970>.

¹¹⁸ See EPI, *Paying for Utility Politics*, at 35–37.

¹¹⁹ *Id.* at 36.

¹²⁰ See *id.*

¹²¹ Surrebuttal Testimony of Jason Kunst, *In re Union Elec. Co. d/b/a Ameren Missouri*, Case No. ER-2014-0258 at 2 (MO-PSC Feb. 6, 2015) (citation omitted), <https://assets.documentcloud.org/documents/3320628/MO-PSC-Surrebuttal-Testimony-Dues.pdf>.